

*In re Pers. Restraint of Grantham (James W.)*  
Dissent by Alexander, J.

No. 82194-1

ALEXANDER, J. (dissenting)—I agree with the majority insofar as it holds that a prison inmate challenging prison discipline does not have to make out a prima facie case of prejudice in order to obtain review (the *Isadore*<sup>1</sup> standard). I also agree that a prisoner who is facing discipline is not entitled to the full panoply of constitutional protections afforded defendants facing criminal charges.

Finally, I agree that we should reverse a prison discipline decision only when it is shown that the decision was so arbitrary and capricious as to deny the prisoner a fundamentally fair proceeding and that the allegedly offending prisoner suffered prejudice as a result. Majority at 12. Looking at the case under this standard, it is apparent to me that the failure of the prison officials to allow James Grantham to hear the recording of the allegedly incriminating telephone conversation was fundamentally unfair and highly prejudicial to him. Indeed, the majority concedes that Grantham “should have been allowed to listen to the recording.” *Id.* at 15. To say that the telephone conversation was critical evidence against Grantham is an understatement.

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<sup>1</sup>*In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 88 P.3d 390 (2004).

It was essentially the only evidence against him and he should have been allowed to hear it. At the very least, the hearing officer should have listened to the recording before he made his ruling, and it was arbitrary and capricious for him to not do so. The majority responds by saying that Grantham was not prejudiced by these errors because a testifying officer heard Grantham utter the “critical” words that his brother was to “buy coffee and make sure he had it ready for Sunday.” *Id.* My response is that there would certainly be prejudice if Grantham was not a party to the phone call or if he cannot be heard to utter the allegedly incriminating words during the call. Only by listening to the recorded phone call can one determine if Grantham was a party to the call and/or that he said the incriminating words. That is why it was important for the recording of the call to be heard by Grantham and the hearing officer before any decision was made.

I will concede that it is true, as the majority indicates, that “prison discipline consumes a significant amount of the public’s resources.” *Id.* at 15 n.5 (citing *In re Pers. Restraint of Gronquist*, 138 Wn.2d 388, 398 n.8, 978 P.2d 1083 (1999)). That fact, however, should not excuse a failure of the prison discipline system to take what surely would have been a brief amount of time to fully examine the critical evidence against Grantham.

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AUTHOR:

Justice Gerry L. Alexander

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WE CONCUR:

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Justice Richard B. Sanders

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